

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

CASE NO.: 07-CR-20607
HON. LAWRENCE P. ZATKOFF

CORDELL SAIN,

Defendant/Petitioner.

**OPINION AND ORDER ADOPTING IN PART
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the Court on Defendant/Petitioner's Motion for Leave to File Memorandum of Law (Docket #37) and Defendant/Petitioner's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Docket #38). The Court is also in receipt of Magistrate Judge Mona K. Majzoub's Report and Recommendation, wherein the Magistrate Judge recommends that Defendant/Petitioner's Motion for Leave to File Memorandum of Law be granted and Defendant/Petitioner's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 be granted in part and denied in part. The Government filed objections to the Report and Recommendation. Defendant/Petitioner filed a reply to the Government's objections.

After a thorough review of: (1) the Court's file, including notes from Defendant/Petitioner's trial, the initial hearing scheduled for Defendant/Petitioner's sentencing at which the Court granted Defendant/Petitioner's motion to have new counsel appointed, and the hearing at which the Court sentenced Defendant/Petitioner, (2) the parties' briefs regarding the Motions, (3) the Report and Recommendation, (4) the Government's

objections to the Report and Recommendation, and (5) Defendant/Petitioner's reply to the Government's objections, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court, except as specifically discussed below.

In the Report and Recommendation, the Magistrate Judge concludes by stating that Defendant/Petitioner's Motion to Vacate under 28 U.S.C. § 2255 should be granted in part and denied in part, but no specific remedy is set forth, *e.g.*, (a) vacating Defendant/Petitioner's convictions, or (b) requiring the Government to reoffer Defendant/Petitioner the best plea proposal that the Government had offered Defendant/Petitioner prior to trial. Based on the guidance of the United States Supreme Court, the Court concludes that, in this case, "the proper exercise of discretion to remedy the constitutional injury [suffered by Defendant/Petitioner is] to require the prosecution to reoffer the plea proposal. Once this has occurred, the [undersigned] can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed." *Lafler v. Cooper*, 132 S.Ct. 1376, 1389 (2012) (citations omitted).

Therefore, for the reasons stated above, the Court hereby ORDERS that:

- A. Defendant/Petitioner's Motion for Leave to File Memorandum of Law (Docket #37) is GRANTED; and
- B. Defendant/Petitioner's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Docket #38) is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that on or before January 16, 2015, the Government shall reoffer to Defendant/Petitioner the Government's best plea offer, *i.e.*, the proposal to dismiss Count 3 of the Indictment, which would have resulted in a guideline range of 41-51 months.

IT IS FURTHER ORDERED that on or before January 30, 2015, Defendant/Petitioner shall notify the Court, in writing, of his intent to accept or reject that plea offer.

IT IS SO ORDERED.

S/Bernard A. Friedman for
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Date: January 7, 2015